

NOT YET SCHEDULED FOR ORAL ARGUMENT**Nos. 18-1236, -1288, -1291**

UNITED STATES COURT OF APPEALS**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATION GVR ACQUISITION, LLC, d/b/a
Green Valley Ranch Resort Spa Casino,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent and Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL 501, AFL-CIO,

Intervenor, Petitioner and Respondent.

On Petition for Review of Decision and Order of National Labor Relations Board
Case No. 366 NLRB No. 175, Cases 28-CA-211043 and 28-CA-216411

**PETITIONER'S RESPONSE TO BOARD'S AND UNION'S MOTIONS TO
GOVERN FUTURE PROCEEDINGS**

HARRIET LIPKIN
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, DC 20004
Telephone: (202) 799-4250
Facsimile: (202) 799-5250
harriet.lipkin@dlapiper.com

STANLEY J. PANIKOWSKI
DLA PIPER LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 699-2643
Facsimile: (619) 699-2701
stanley.panikowski@dlapiper.com

Counsel for Petitioner

Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino

Petitioner Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino (“GVR”) files this consolidated response to: (1) Respondent/Cross-Petitioner National Labor Relations Board’s (“NLRB” or “Board”) Motion to Govern Future Proceedings by Continuing Abeyance for 60 Days (“Motion”) (Document #1832445, filed March 9, 2020); and (2) Intervenor, Petitioner and Respondent International Union of Operating Engineers Local 501, AFL CIO’s (“Union”) Motion to Govern Further Proceedings (Document #1831843, filed March 4, 2020).

GVR supports the Board’s Motion.

As explained in the Board’s Motion, GVR’s appeal involves two fundamental issues: (1) Was the certification of the Union proper and, if so, (2) did the Board err in holding that GVR waived its confidentiality interests in certain materials requested by the Union?

GVR agrees that the first issue will be resolved for purposes of this particular appeal by the Ninth Circuit (or potentially the U.S. Supreme Court) in connection with “*GVR I*,” leaving only the second issue for this Court’s determination. See *Int’l Union of Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020). The Ninth Circuit’s decision on the threshold issue, however, remains subject to further review. GVR intends to seek *en banc* rehearing of the Ninth Circuit panel’s decision in *GVR I*. GVR’s petition is due on March 23, 2020. No mandate, of course, has issued yet in *GVR I*. Consequently, it

would be premature to resume proceedings in the instant appeal at this time, as the threshold issue of whether the Union was properly certified remains subject to further review.

Regarding the second issue, the Board's decision in *NP Palace LLC d/b/a Palace Station Hotel & Casino*, 368 N.L.R.B. No. 48 ("*Palace II*"), adopted the same argument that GVR advances in this case: an employer seeking review of a certification decision cannot be put to the impossible choice of either: (a) waiving its certification challenge by bargaining with a union over the union's information requests, or (b) refusing to bargain with the union, thereby waiving any challenges to the propriety of the union's information requests. As the Board's new precedent in *Palace II* substantially adopts the position advocated by GVR in this case, GVR agrees that it is appropriate for the Board to deliberate internally and consider whether to modify its position and/or alter its request for relief in this appeal. GVR agrees that, in light of these circumstances, plus the availability of further review in *GVR I* and the Board's representations concerning its counsel's schedules, a further abeyance of 60 days is appropriate.

Dated: March 13, 2020

Respectfully submitted,

/s/ Harriet Lipkin

HARRIET LIPKIN
DLA Piper LLP (US)
500 Eighth Street, NW
Washington, D 20004
Telephone: (202) 799-4250
Facsimile: (202) 799-5250

STANLEY J. PANIKOWSKI
DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 699-2643
Facsimile: (619) 699-2701

Counsel for Petitioner
Station GVR Acquisition, LLC d/b/a Green
Valley Ranch Resort Spa Casino

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Federal Rule of Appellate Procedure 32(g)(1) that this response contains 418 words, excluding the portions exempted by the rules, and has been prepared with Microsoft Word 2016 in a proportional 14 point typeface in Times New Roman font.

Dated: March 13, 2020

Respectfully submitted,

/s/ Harriet Lipkin

HARRIET LIPKIN

DLA Piper LLP (US)

500 Eighth Street, NW

Washington, D 20004

Telephone: (202) 799-4250

Facsimile: (202) 799-5250

CERTIFICATE OF SERVICE

I certify that I electronically filed this PETITIONER’S RESPONSE TO BOARD’S AND UNION’S MOTIONS TO GOVERN FUTURE PROCEEDINGS with the United States Court of Appeals for the District of Columbia Circuit via the Court’s CM/ECF system on March 13, 2020, and that service will be made on counsel of record for all parties to this case through the Court’s CM/ECF system.

/s/ Harriet Lipkin

HARRIET LIPKIN

DLA Piper LLP (US)

500 Eighth Street, NW

Washington, DC 20004

Telephone: (202) 799-4250

Facsimile: (202) 799-5250